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(3) A BILL FURTHER TO AMEND THE MADRAS PROHIBITION ACT, 1937 (L.A. BILL NO. 31 OF 1947)

THE HON. MR. DANIEL THOMAS :—" Mr. President, Sir, I move—

' that the Madras Prohibition (Amendment) Bill, 1947 (L.A. Bill No. 31 of 1947) as passed by the Assembly ^a, be taken into consideration.'

" I think, Sir, that my work has been, to a certain extent, rendered easier by the hon. Members who have just spoken on the Bill regarding the enhancement of the betting tax, because they have expressed a general consensus of opinion in favour of the prohibition policy of the Government. This measure which is now before this August Assembly is in furtherance of the prohibition policy implemented by the Madras Government. Hon. Members of this House are aware that the Congress Party is committed to a policy of prohibition and in pursuance of this policy, the Madras Government have already introduced prohibition in 16 districts of this Province. There remains only 8 districts more; where, as I said a few moments ago, we hope to introduce prohibition before the end of next year. The object of the present Bill is to make the state of intoxication by itself liable to the prescribed penalty. Clause 4 of the existing Prohibition Act deals with penal provisions. Under clauses (i) to (j), whoever sells liquor or any intoxicating drug or consumes any intoxicating drug is rendered liable to a penalty. In the actual working of section 2, certain difficulties have arisen. As I said just now, prohibition has been introduced only partially in the Province. There are still 8 wet districts which either adjoin, abet or are in contiguity with the other 16 dry districts. What happens is that when there is a border which divides the wet area from the dry area, persons from the dry area cross the border and get into the wet area, go to the toddy and arrack shops, take a good draught and return to the dry area in a state of intoxication."

MR. PRESIDENT :—" Don't they consume here? "

THE HON. MR. DANIEL THOMAS :—" No, Sir, if they do so, they will come under the mischief of the present section."

SRI C. N. MUTHURANGA MUDALIYAR :—" They carry it in their stomachs! "

THE HON. MR. DANIEL THOMAS :—" Sir, as I said, the trouble is these specimen of humanity who cross the border, come back in a state of intoxication and exhibit themselves, but there is no provision under the present law by which they could be tried and punished, and thus they are successfully able to defy the Prohibition Act implemented by the Government, and thereby the working of the law is, to a certain extent, rendered ineffective."

K. UPPI SAHIB BAHADUR :—" Suppose a man comes from a wet area to a dry area with an intoxicating drug, how do you know that that man has drunk or is carrying an intoxicating drug? Is it by smelling his mouth or by seeing his form? "

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THE HON. MR. DANIEL THOMAS :—“ Sir, that is a matter of detail which I shall not discuss at present. It is dealt with in the language of the Bill itself. Sir, as I have been saying just now, certain difficulties like these have been experienced in the actual working of the prohibition policy and it is with a view to prevent such things happening, that this Bill is brought forward.”

MR. PRESIDENT :—“ In this connexion, may I make a remark, which had Hon. Minister may answer? The present Bill deals only with persons found in a state of intoxication, and not the persons who actually consume liquor. Suppose one drinks but is not found in a state of intoxication, is he punishable? ”

THE HON. MR. DANIEL THOMAS :—“ If he comes back below the state of intoxication, he is safe, Sir.”

SRI S. B. ADITYAN :—“ Why do you not punish intoxication even in a wet area? ”

THE HON. MR. DANIEL THOMAS :—“ I will deal with that point presently, Sir. I was just dealing with the difficulties experienced in the border, between dry and wet districts. Similar difficulties have also arisen in the interior of dry districts. Suppose there is a wet area. . . . ”

MR. PRESIDENT :—“ Why not the Government make drinking a punishable offence for a man living in a dry area, in so far as the policy of the Government is to see that a man in that dry area is prevented from drinking? ”

THE HON. MR. DANIEL THOMAS :—“ Sir, we cannot make the consumption of liquor by people coming from dry areas to wet, an offence consistently with our programme. We want to see that the working of the Prohibition Act is a success in all dry areas. As I said, Sir, this man who crosses the border and comes back in a state of intoxication and exhibits himself as such, brings the policy of prohibition into contempt. But the man who crosses the border and drinks moderately and comes back without being detected, does not offend the law.

“ After all, this is only a temporary measure. In the course of the next year, we expect the whole Province to go dry and then the question of consumption of liquor in any area will not arise at all.

“ Another question also arises in this connexion. Take for instance the interior of the dry areas of Cuddapah, Kurnool, Bellary and Anantapur. There, in the interior of the hilly tracts, illicit distillation is reported to be going on, on a large scale. Sir, there is always a tussle between the law-maker and the law-breaker. The law-maker makes certain provisions to prevent law-breaking; but the law-breaker sees in what way he can evade the law. In the present Act, consumption, purchase and possession of liquor—all these are made offences in a dry area. What happens in the interior of a dry area is this. In the forest areas, in the hills and in the unfrequented parts of the interior, a lot

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of illicit distillation is going on. Whenever any officer goes there and detects the illicit distillation of arrack that is going on there, nobody owns whose articles they are."

MR. PRESIDENT:—"They are all Government lands."

THE HON. MR. DANIEL THOMAS:—"Yes, Sir, it may be. But so far as the illicit liquor is concerned, nobody comes and owns that it is his, because he will be convicted. Thus the implementation of the policy of prohibition becomes difficult. Even if the Government officers are unable to detect the actual illicit distillation in process, or any person actually in possession of illicit liquor, if a man is found in a state of intoxication in a dry area, the prohibition officers can examine this man, and follow him up and detect crimes. Even apart from that, Sir, if we now meet a man in a dry area in an intoxicated state, by the time he is actually brought before the court, he would have passed the state of intoxication and it may not be possible to prove that the man was drunk and many cases have failed like that. Therefore, in order to give proper effect to the provisions of the Prohibition Act, and to strictly enforce the prohibition policy of the Government, in these dry areas, this amendment is brought before this House.

"Sir, I would now mention the actual provision that is sought to be introduced. The new clause 4-A which is now inserted reads as follows:—

'Whoever is found in a state of intoxication in any public place and whoever, not having been permitted to consume any liquor or intoxicating drug in pursuance of this Act, is found in a state of intoxication in any private place, shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.'

"There are two classes of persons contemplated under this amendment, Sir. The first is the class of persons, whether permitted to consume or not permitted to consume drink who are found in a state of intoxication in a public place; the second class of persons are those who have no permission to consume any liquor, and are found in a state of intoxication in a private place. Both these classes of people are punishable under this amending Bill. Sir, it is necessary to bring these people under the provisions of this Bill in order to implement the policy of prohibition in an effective and beneficial manner in these dry areas.

"Sir, it was asked by an hon. Member why the mere consumption even in a wet area should not be prohibited. The point is this, Sir. If a person is found in a state of intoxication in a public place in a wet area, there is a provision for prosecuting him under the general laws. Section 510 of the Indian Penal Code applies in such cases and it provides for the punishment of a person who, in a state of intoxication, appears in a public place

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or in a place which it is a trespass in him to enter and there conducts himself in such a manner as to cause annoyance to others.

"As I said just now, Sir, this is only a transitional affair, till all the wet areas are made dry in the course of another year, and this will have relevancy only within the interregnum between the present state of things and till prohibition is extended throughout the Province.

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"Once again, I would submit that so far as the question of prohibition is concerned, the Government are losing Rs. 17 crores of excise revenue; but it is a measure which is intended for the general uplift of the masses of the Province and therefore every step should be taken, for the purpose of fully, effectively and beneficially working the provisions of the prohibition laws. It was stated at the outset by my hon. Friend Mr. Farookhi that the betting tax is more or less something like prohibition. Sir, I beg to differ. I remember a famous passage in Shakespeare which says 'he who takes my purse takes trash.' So far as betting is concerned, it is only a question of taking the money in the purse; but so far as prohibition is concerned, he who takes my purse takes away self-respect by being found in a state of intoxication. That, I think, is something higher and very different."

ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"Am I to understand that a gambler does not lose his self-respect?"

THE HON. MR. DANIEL THOMAS:—"I do not know; but so far as I know, a person in a state of intoxication belongs to a different category and a different order as compared to one who gambles. In regard to gambling, it is only a question of losing money; but so far as intoxication is concerned, I think it is quite on a different level altogether. Therefore, Sir, I say this measure deserves the support of this House."

* DR. SIR A. LAKSHMANASWAMI MUDALIYAR:—"Sir, I do not think any question arises in the consideration of this Bill, whether effective steps should not be taken for implementing the intentions of the Government after the introduction of prohibition. The Hon. Minister has been speaking of grave offences that have been committed in areas where prohibition has been introduced and in areas where a certain amount of restriction has been imposed. I think the House will agree that if an Act is introduced and passed, it must be implemented and steps should be taken to implement it. While that position is conceded, if a measure is sought to be introduced by an Act of Legislature to implement such prohibition, it may be seriously questioned, as the remedy may prove to be much worse than the evil complained of. Sir, I am aghast at the provision that is sought to be introduced in this Bill, which has been already passed in the other House. It is a very simple thing that the Hon. Minister has suggested. It says:

'Whoever is found in a state of intoxication in any public place and whoever, not having been permitted to consume

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any liquor or intoxicating drug in pursuance of this Act, is found in a state of intoxication in any private place, shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

" Now, the question as to who is in a state of intoxication is a very difficult question to decide. I think I can say, with some knowledge, that it is a very difficult problem in our medical profession when we are called upon to decide, and that it is a matter of grave concern, before we can pronounce an opinion as to whether a person is in a state of intoxication or not. And I venture to suggest with all humility that the officers to whom you are going to entrust this extraordinary power under this Act will not be in a position to decide, without grave injustice in some cases at any rate, as to who is a person that is intoxicated and who is one that is not intoxicated.

" Then, Sir, let us examine what exactly will be the procedure adopted. You have, under your Act, delegated certain powers and duties to, and also laid down certain procedure to be followed by, these officers. I wish to make my point very clear; in a matter such as this, particularly in places where public opinion cannot express itself as effectively as perhaps in a large city where there are many persons to look after public interests and who can give expression to tyrannies exercised, this will be an engine of oppression in the hands of these officers in respect of any person or persons with whom they may have differences of opinion, whether those differences are differences due to family feuds, or social feuds or communal feuds or even, I may say, political feuds. I do not think the Government have seriously considered the repercussions of passing such a legislation as this. It is not a question of the merits of the theory advanced by the Hon. Minister; it is not a question whether prohibition should be practised or not but by the manner in which they are trying to implement the policy, they are going to deal a serious blow to the individual freedom and the individual liberty of every person, a thing which I think will never be attempted in any country in the world.

" Now let me come to another point. This is added to the Act as section 4-A; but if hon. Members would kindly go through section 4 (1), they will see that the offences are such as can be brought home to the offender by some sort of evidence taken at a later stage. And here, what is the offence that you are going to let in at a later stage? A man goes to a house at 11 o'clock in the night and tells a person there 'you are intoxicated, I arrest you.' What is the offence, I ask? Is he going to summon a panchayat to know whether he is intoxicated or not? Even a panchayat will not be in a position to know whether the officer's statement is a correct statement, when in the morning that man is free from the particular offence which he is supposed to have committed. It seems to me, Sir, that there has been a certain amount of loose thinking in regard to such a serious legislation as this which I wish

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the Government to ponder over. If side by side with this section 4-A, the Government had also informed this House as to the manner in which they are proposing to implement this draconian legislation that offends against the first principles of personal liberty and individual freedom on account of the abuses to which it may be subjected, then we in this House might have been in a better position to appreciate their intentions, and what is far more important, the manner in which they propose to implement those intentions.

“ Then again, Sir, such a person ‘ shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.’ Well, here is an intoxicated person. Is it suggested that he should be straight-way put into the police lock-up? I know there is a provision in some law that in respect of certain offences the man may be let out on bail. A really intoxicated person is incapable of arranging for his being let out on bail, and the result will be that he will be taken to the police lock-up. Let us suppose that he is not really intoxicated; hon. Members may say that his relations may come to his rescue and get him out on bail. It may be that the man is not surrounded by his relations in that place; we also know as a matter of fact that in many cases, the relations in the place may be only a wife and young children, who cannot come to the man's rescue. Is it suggested that this person should, in such a case, be marched to the police station and locked up immediately? You may say it is not likely and he is secure, but the intention is there, and the police officer may take him to the police lock-up and lock him up. In all countries of the world where personal liberty is encroached upon, there are many safeguards which are put in and implemented. The Hon. Minister is a very seasoned lawyer himself; he must have argued many cases and found out the procedure adopted in many countries in respect of these offences. It seems to me we are rushing through legislation just because of our exuberant enthusiasm for implementing the policy, which however will cut at the root of personal liberty and freedom. I therefore appeal very strongly that this Bill, whatever its fate—and we all know that whatever we may say, it will be passed, and that is a foregone conclusion—should not be pushed through in the spirit in which it has been introduced, but that what has been said here should give rise to a serious searching of their hearts, so as to see that all these developments and these very unfortunate trends do not happen in the future. This measure has been brought forward; I read about the suggestion some time ago in the paper when the Hon. Minister was touring in Salem. I do not for a moment deny that there are these trends from dry to wet areas, I do not for a moment deny that people are getting dead drunk in the wet areas and returning to dry areas, but there should be circumspection in any legislation which tries to penalise offenders, and that offence must be brought home to them in a manner in which the public at any rate will be able to realize that he is an offender.

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"The main contention that I put forward in regard to this particular Bill is that the public cannot be satisfied that injustice may not be done even on a large scale. For, after all, it is not the Hon. Minister that is going to enter into the houses, but it is the myrmidons of the law who will be let loose on these people; and with due deference, Sir, we know what the result of all that would be."

* SRI B. NARAYANASWAMI NAYUDU :—"Mr. President, Sir, if I rise to speak on this occasion, it is not with the hope of having anything done which will slacken the pace of prohibition. I know the party opposite well enough; and with regard the policy of prohibition, it is beyond all redemption. I may say even as a drunkard is beyond redemption, the party opposite, in regard to its prohibition policy is beyond redemption. I say this because I know you are intoxicated with that policy, you are going to carry this through; but I want to point out that this policy of prohibition if pursued with diligence will bring its own retribution."

"The one thing that comes out of this Bill is: You want to make drunkenness an offence. The Indian Penal Code has made adultery an offence; you now want to make drunkenness an offence; you think that if drunkenness is made an offence, it will prevent people from drinking. It may be tried on paper, it may be tried in spirit, but the result you expect will not be there. You want power to go to any person, say he is intoxicated and then arrest him. At any time in the night, an officer can enter a house and drag a person out. Are you not giving opportunities to the police officers and the prohibition officers to go and tell the people 'unless you give me some money, I will not leave you, otherwise, come along'? Are you not encouraging this kind of blackmail? Are you really blind to the consequences of this provision? Is it merely to give a wire to Gandhiji saying 'here, prohibition has been inaugurated, bless me; so many districts are going dry'? Are you really sure that you can prevent what may be called the penal effect of drunkenness? What is all this nonsense about? I ask you, is it really a workable law?"

MR. PRESIDENT :—"I think the hon. Member is not in order in saying 'nonsense'."

SRI B. NARAYANASWAMI NAYUDU :—"I withdraw the word 'nonsense.' I say it shows a lamentable lack of what may be called practical knowledge of the world—whether that is nonsense or not. Do you really feel convinced that by reason of this provision here, you are going to implement the policy of prohibition, as my hon. Friend has said? Are you likely to reduce to any degree what you call illicit distillation going on in the several parts of the Province? Have you any idea of the reasons for which these people will be put in prison? Is it merely an eye-wash which you are trying by this Bill? I ask sincerely, do you feel sincerely that you are going to make the districts dry in the real sense of the word? There will be black sheep everywhere, and because of that black sheep, you want to penalise the whole population of the

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village, with your secret police and the officer who can knock at your door and enter it at any time of the day or night? Political feuds will play a great part in this respect; and if this Bill is to be passed as it is, as I said, you are beyond all redemption."

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p.m.

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Sir, I am wholly with the Government with regard to the prohibition policy but I disagree with piecemeal legislations with regard to prohibition. They are providing innocent people with drink in some places and they are making some other places dry. So, in fact they are tempting the people in the dry areas to go to some other places where liquor shops continue. So, there seems to be an inconsistency and there seems to be no logic in this. Therefore, the fault is not with the people who drink but with us who sit here and legislate. I do not say the Minister but I also admit my responsibility because I form part of this House. It is not due to the fault of the Government but it is due to the fault of the members here who have been elected by a large number of people, because it is their duty to see that prohibition is introduced in the whole Province at once. Therefore, Sir, it is very difficult to persuade oneself to believe that a man should be punished for drinking because if he cannot get his drink here, the Government allows him to get his drink elsewhere. So, we request this Government to introduce prohibition immediately in the whole Province. Then, Sir, there is the question of illicit distillation"

MR. PRESIDENT :—" A man can go and drink in another Province."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I submitted in my speech with regard to betting that it is not the concern of ours. Our concern is to see that people in our Province do not drink."

MR. PRESIDENT :—" Even the Province has got a border. People can go and drink on the other side of the border."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" It is the Government of India that is responsible in that matter, Sir. It is the Government of India that inaugurate such a policy. It is the Congress Party which is dominating the Government of India and dominating the Government of this Province that is responsible. So, they have to be criticized for this policy of piecemeal legislation. Therefore, if they really want—not for any exhibition or demonstration—to improve the morality and the economic condition of the people, if they really want the people not to drink in the border or in other provinces, they should inaugurate an all-India policy to prevent people from drinking anywhere in this Union. If such a policy can be adumbrated"

MR. PRESIDENT :—" Are you sure they won't go to Pakistan? "

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* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" If they can go to Pakistan, I think they can go even to America. We do not know whether there is prohibition in Pakistan or not. If once they go to Pakistan for drink, we are not going to allow them to come back to India. So, let them go to Pakistan once and for ever and let them not come back to India after having been addicted to drink.

" Another point which I would like to submit is that the Hon. the Minister in answer to a question put by Mr. Adityan stated that there are rules under the Act already in existence to prevent people or arrest people if they are drunk and if they are in a state of intoxication."

THE HON. MR. DANIEL THOMAS :—" Coupled with certain other clauses."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Of course, they are there coupled with certain other clauses. They are preventive rules. The rules are continuing as part of the Act. When this Act is in force, why should an amending Bill be moved? With regard to this particular matter, I want to know whether there is any difference between the existing Act and the present one. If there is a very small difference, then in that case, the present state of affairs can be allowed to continue till prohibition is introduced in the whole Province. So, I want to know why such temporary legislations are being passed. Therefore, I would submit that there is much reason, much logic and much sense in what the previous speakers have said about it. It is better that we do not allow some officials to coerce the people. It will be a sort of coercion because we will be allowing small officials to take bribes. There was a question in the other House and in answer to that question, it was stated that small officials and petty officials do take bribes and that bribery is going on. I am not concerned with the names of the people. Generally speaking, bribery is going on. This Act will help such petty officials to fleece the people and to get as much bribe as possible. So, in matters like this, Government should be very careful to see that the interests of innocent people are safeguarded. I would very much like that those who are addicted to drink should be penalised. If they are penalised, they will gradually try to give up the drink habit and they will become sober. In cases like these, it is possible that innocent people will be caught hold of. The petty officials will say, unless you give us some money, we will not allow you to go and thus they will try to foist cases on innocent persons and extort money and these people will be helpless; they may not have relatives who can go with them and plead on their behalf at the police stations. Their children will be left in a helpless state. Again, in the police stations, there may not be sufficient defence adduced in their favour. As a matter of fact, in matters like this, there is no investigation following the arrest. In some places, the police thrive upon the income that they get from these toddy shops and arrack shops. We are going to penalise the people who drink in such places and then go to the

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dry areas. I say, there is no use in this legislation at all, because it is we who are responsible for the people going to wet areas and then after drinking, coming to dry areas. Therefore, it is the responsibility of the Government to introduce prohibition in all the districts of the Province. If they do not introduce prohibition in all the districts but only in certain districts, then, because there will be certain toddy shops and arrack shops open in the districts where there is no prohibition, people will be induced to go there. So, there is a tendency on the part of the people to go to the border areas for drinking and then after drinking, they go back to their places. If you are going to penalise them, then you are penalising the wrong persons. After all, it is my hon. Friend, Mr. Daniel Thomas, who is responsible for this and so, he has to be penalised for not introducing prohibition in the whole of the Province. So long as that was not done, any person will go to the toddy shops in the border areas or in the wet areas and then after drinking, will come back to his own place."

* THE HON. SRI K. MADHAVA MENON :—" I did not think of intervening in this debate but I feel I should clear up certain points. First of all, we have been accused for not introducing prohibition throughout the Province and that we are providing the temptation for drinking. May I remind my hon. Friend, Mr. Farookhi, that even if we introduce prohibition throughout the Province, still there are certain areas within this Province for which we cannot legislate, for example, Pondicherry, Mahe and Chandranagore? There are also other border areas like Mysore and Hyderabad which are free from prohibition. So, even if we bring in prohibition throughout the Province, we will not be able to enforce prohibition throughout the Province. So, the argument that is not enforced throughout the Province is no argument against an attempt to bring in a measure of this kind."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" So, I am saying that prohibition should be introduced in the whole Province."

* THE HON. SRI K. MADHAVA MENON :—" I am now speaking of the whole Province. Even if we bring in prohibition in the whole Province, there are certain pockets like Pondicherry, Mahe and Chandranagore within the Province where we have no jurisdiction and where people can drink. My hon. Friend, Mr. Uppi Sahib, will bear witness to me when I say that where the firka development scheme is worked, there is evidence to show that some people in that area go out of the area for drinking toddy."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Will the Hon. the Minister give up prohibition altogether, on account of this inconsistency? "

* THE HON. SRI K. MADHAVA MENON :—" I must say that the inconsistency is not with me but with Mr. Farookhi. If he has simply said it in a humorous way, then I entirely agree with him and I say that Government should introduce prohibition in all

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the districts. But there are certain difficulties in the way and so, we have come with this piecemeal legislation. So, it is not the inconsistency of the Government that prompted this measure to be brought in.

"Then, Sir, I must thank my hon. Friend, Mr. B. Narayanaswami Nayudu, for his kind benedictions rather intimidations about retributions and also for his remarks that we are beyond redemption. It is a matter of opinion, Sir. I also feel that he is beyond redemption in certain matters. Certain ideas have become so crystallized in him that I think that he is beyond redemption. I can understand him when he says that we are also beyond redemption in certain fundamentals. We believe in prohibition and so we are trying to bring in prohibition. Then, Sir, the hon. Member, Mr. Narayanaswami Nayudu, spoke about illicit distillation. An able lawyer that he is, he must know that in spite of the Penal Code, there are offences. That does not mean that we are tempted to commit an offence. Our attempt is to succeed and not to fail. Adultery is an offence but yet adultery is going on. For that reason, will he advocate expunging the clauses about adultery from the Penal Code?"

SRI B. NARAYANASWAMI NAYUDU :—"It is expunged."
(Laughter.)

* THE HON. SRI K. MADHAVA MENON :—"It is not, Sir. He will not advocate it. He may say that now but he will not do it. Apart from that question, I admit that to some extent there may be illicit distillation. An attempt at prohibition is not merely an idea of reforming the present addict but it has a greater objective, and that is, we want to prevent the prospective addicts, the younger generation of the present day, from drinking. We are trying to wean them away from this drink evil. I am sure hon. Members will visualise that these persons who belong to the younger generation, the majority of them, will not walk many miles to places where illicit distillation is carried on and thus be addicted to drink. There may be some exceptions but on account of that, we ought not to be thwarted from our objective.

"Sir, there was no necessity for me to speak at all, but I was provoked by some remarks made by the hon. Member Mr. Narayanaswami Nayudu about retribution. I can assure the hon. Member that we are willing to be judged by the electorate but we cannot be deflected from our objectives merely by threats of 'retribution.'

"Then one word, more, Sir. The hon. Dr. Lakshmanaswami Mudaliyar, able and experienced as he is, has said that there is an anomaly in this Bill. He referred to the difficulty of detecting the offender in a state of intoxication, and said that there are cases of drunkenness without intoxication. It is always a matter for the judges to decide whether a particular man is in a state of intoxication or not. I have even seen many medical certificates granted by many doctors to this effect, 'He is drunk but not under the influence of drink.' So, it is a matter for the judges to decide

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whether a man is intoxicated or not. Section 509 of the Penal Code deals with cases of intoxication. So, it is a matter for the lawyers and the judges. Even doctors also have to decide whether a drunken man is intoxicated or not. So, there may be some general cases like this."

DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—" May I ask the Hon. Minister whether, besides being intoxicated, is it the idea that a particular act has necessarily to be committed by the intoxicated person so that this Act may be made applicable to him? "

1 p.m. THE HON. SRI K. MADHAVA MENON :—" Sir, under the old Act whoever appears in public intoxicated is an offender and here we are extending it to private places also. I agree that we are encroaching upon certain rights which as I have said before is inevitable in the enforcement of any law. The gravamen of the charge of Dr. Lakshmanaswami Mudaliar was how to define this state of intoxication. It has been the headache of many eminent doctors and courts, but still we have got to work it out and we hope to work it out, with as little harassment as it is possible. Every day cases of evasion of the Prohibition Act are being brought to our notice in places adjacent to dry districts such as Mahe, Mysore and Hyderabad."

K. UPPI SAHIB BAHADUR :—" Sir, we have made our position clear that we will stand by the Government for complete prohibition, but we cannot be a party to such a piecemeal legislation brought forward in such a lighthearted manner. Sir, when one reads the section one shivers; it is shocking. Sir, the provision says, 'Whoever is found in a state of intoxication in any public place and whoever, not having been permitted to consume any liquor or intoxicating drug in pursuance of this Act, is found in a state of intoxication in any private place.' The private place may mean a bed chamber. I say if a man is sleeping in his bed room, he can very well be arrested saying that he is under the influence of opium. He can be harassed. Petty officials can arrest anybody who is sleeping saying that he is under the influence of ganja or opium. This law is so wide as to permit all this. They can arrest you, me and even the Prime Minister."

MR. PRESIDENT :—" Not me at any rate." (Laughter.)

K. UPPI SAHIB BAHADUR :—" How are you to prove that you are not drunk? "

MR. PRESIDENT :—" There is my reputation."

K. UPPI SAHIB BAHADUR :—" I do not say that you will be arrested under an intoxicated state. My point is only to point out the sweeping powers of the clause. A drunkard is not afraid of his reputation, a habitual drunkard is not afraid of anything. When there are some witnesses, the Hon. the Premier himself can be arrested. There will be much harassment in villages. They are creating a machine for petty officials to black-mail. We

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cannot be a party to this piecemeal legislation as it is dangerous. If, even 100 offenders escape and one man suffers that is not justice. I, therefore strongly oppose this Bill."

THE HON. MR. DANIEL THOMAS :—" Mr. President, Sir, I should be content to make a few general observations on the many comments and criticisms made in this honourable House. General observations apart, criticisms have been made that this measure places in the hands of the Police large powers and they are likely to be abused. I may say that this is a belated criticism that has been made. This Bill has been in force for the past nine solid years. The Prohibition Act was introduced in this Province in 1937, and it has been in force with an interregnum during the Advisers' Regime. This measure has had the approval of both the Assembly and this House. I would now ask you only to compare the provisions of the present Act with that of the old one. Mr. Uppi Sahib has drawn conclusions from his fertile imagination. He has drawn a very lurid picture of how this act will be applied even to the bed room and people will be harassed. I submit Sir, that his fears have absolutely no reality. I would invite your attention to section 4 of the Madras Prohibition Act. Under that consumers of liquor are to be punished, but now this Act says that it will apply to those who are found in an intoxicated condition also. This is only for avoiding the evasion of the Prohibition Act."

DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—" Is the Prohibition Officer allowed to enter a bed chamber when he has evidence that the man has consumed liquor? "

THE HON. MR. DANIEL THOMAS :—" I would refer to section 29 of the Prohibition Act which says that the Collector, Prohibition Officer and the Police Officer not below the rank of a Sub-Inspector can enter a private house and arrest any person for having committed an offence under the Act. That empowers the Police Officer to arrest him for having consumed liquor. Here we are saying that he will be arrested if he is actually found in a state of intoxication. I may say, Sir, that from 1937 to 1941 and from 1946 up to date this Act has been in force. So far, we have not received one complaint about the misuse of powers by the Police or the Prohibition Officers. There have been a number of cases where Police Officers have entered private houses and convicted persons. I would submit that from 1937 onwards all the provisions against which my hon. Friend is comparing have been there. They have the sanction of the Congress Party and the overwhelming people and the electorate have appreciated and approved this prohibition policy of ours. If Mr. Narayanaswami Naidu doubts me he would have found the truth if he had followed me on 1st October to Madura. You have condemned those drink addicts as beyond redemption. We say, ' No, we will reform them. Let them not be damned '. These people do not know what is good for themselves. We have therefore made rules and regulations in order to enable them to lead a good life. The Opposition say that

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they are supporting wholeheartedly our prohibition programme, but how can we make it a success, Sir, without effectively enforcing it."

-K. UPPI SAHIB BAHADUR :—" On a point of personal explanation, I may point out, Sir, that I have made my position already clear that we are prepared to agree to the conviction of the actual offenders and I would even say that they should be punished very severely."

THE HON. MR. DANIEL THOMAS :—" That is exactly the purpose of this Bill, Sir. I do not understand what they are objecting to. The head and front of this measure is to punish the offenders and make prohibition a success. We are both on common ground with regard to this policy."

MR. PRESIDENT :—" The complaint of the Opposition seems to be that under this Bill a private house and even a bed chamber can be invaded."

THE HON. MR. DANIEL THOMAS :—" When once we have decided upon this policy of prohibition, we must go to the fullest extent necessary to implement it. There cannot be any half-way houses."

MR. PRESIDENT :—" Does not the Act provide for making rules in order that the officers may enter only with some help from panchayatdars and the like? "

THE HON. MR. DANIEL THOMAS :—" I will deal with it presently. We have to accept the full implications of this policy, we have to make all the necessary provisions. This measure is necessary for the full and effective enforcement of prohibition.

" My hon. Friend Farookhi Sahib was also saying that this is only a temporary measure and the necessity for this will disappear as soon as the prohibition scheme is introduced in all the districts. It is not so. Even in places where there is prohibition there is illicit distillation. There have been many such cases. In such places people will be found to be in an intoxicated condition. Even after the introduction of prohibition in all the 24 districts the necessity for this provision will be there and it will be imperatively necessary. Now a man may go to the border and have a drink and come back, and he cannot be punished under the present Act. Under the new provision if he is found to be in an intoxicated condition even if he has not been found out in the actual act of drinking, he will be punished. Therefore, Sir, the necessity for this provision will be there even after the full introduction of prohibition in all our districts.

1-15 P.M. " Clause 4 of the Prohibition Act of 1937 lays down various offences from (a) to (k) and certain procedure is laid down under

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the Act for the investigation of offences falling under these categories. In that connexion, Sir, I would refer to you to sections 28 and 29 of the same Act. Section 28 says—

'If any Collector, Prohibition Officer or Magistrate upon information obtained and after such enquiry as he thinks necessary, has reason to believe that an offence under sub-section (1) of section 4 has been committed, he may issue a warrant for the search for any liquor . . .'

and this enables the officer to issue a search warrant which will enable him to enter and inspect private houses, arrest any offenders or recover property. There is also a reserve provision under section 29, which says—

'Whenever a Collector, any Prohibition Officer not below such rank as the Provincial Government may determine, any Police Officer not below the rank of sub-inspector, any officer-in-charge of a police station, or any other paid or honorary officer authorized by the Provincial Government in this behalf has reason to believe that an offence under sub-section (1) of section 4 has been committed and that the delay occasioned by obtaining a search warrant under section 28 will prevent the execution thereof, he may, after recording his reasons and the grounds of his belief at any time by day or night enter and search any place, and he may seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Act.'

This is a reserve provision and the normal procedure is the one outlined in section 28 of the Act, namely, of the search warrant being issued by the Magistrate. I agree with some of the remarks made by some hon. Members that in some exceptional cases this might possibly lead to some abuse."

MR. PRESIDENT:—"I suppose that rules can be framed in connexion with section 4 that even if this section 29 is to be used, it must be under proper safeguards. This is a matter which the Government will do well to consider."

THE HON. MR. DANIEL THOMAS:—"I agree that this might in exceptional cases lead to abuse; therefore, Government will take particular care either by rules or by departmental instructions to see that there is no abuse of the provisions contained in section 29 with reference to the question of intoxication. But thus far, so far as the offences contained in section 4 of the Prohibition Act are concerned, there has been no suggestion either in this House or in the other House of any abuse at all. None-the-less we shall see that with reference to intoxication necessary safeguards are provided so as to see that these provisions are not in any way abused by any of the subordinate officers who may have any grievances against any particular individual.

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“ My hon. Friend, Mr. Adityan and Mr. Farookhi wanted to know the difference between the Bill as it now stands and the present Bill. In this connexion, I wish to invite the attention of hon. Members to section 510 of the Indian Penal Code which reads—

‘ Whoever in a state of intoxication, appears in any public place or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person’

and the other provision of the law on the point is section 3 (12) of the Towns Nuisances Act, 1889 (Act III of 1889) which says—

‘ Whoever is found drunk and incapable of taking care of himself or is guilty of any riotous, disorderly or indecent behaviour.’

In these two sections, what is taken note of is not mere intoxication, but only when it is accompanied by appearing in any public place or being incapable of taking care of himself, etc. But in a dry area where Prohibition has been introduced, people are supposed to be sober and nobody could appear in a state of intoxication and it will be a breach of the Prohibition law if one were to be in a state of intoxication and that is the purpose and import of the present measure. Dr. Lakshmanaswami Mudaliyar, for whose opinion I have the greatest regard and esteem, referred more to the details of the working of the Act than to the principles underlying the Act and he himself agreed that in a measure like the Prohibition Act, they should take necessary steps in order to enforce it properly, fully and effectively. I assure him that this measure is designed to achieve it and this is only a step-in-aid to the full enforcement of Prohibition. The question was raised that intoxication as defined by the present law is rather broad. I wish to point out in that connexion that the question of intoxication has been before the country in these two Acts, namely, the Indian Penal Code and the Towns Nuisances Act. There have been a number of prosecutions and in all those cases evidences are adduced and the Magistrate comes to judgment whether a particular man is guilty or not on the basis of evidence on the question whether the additional acts mentioned in the sections have been committed, by way of supplement to the state of intoxication. During all these years, intoxication has been gone into and has been considered and has been investigated and judgment has been passed. What applies to these two Acts applies equally to the present measure. The procedure as regards search warrants is subject to the general provisions in the criminal codes as well. As I told you, Sir, when action is to be taken pursuant to section 29 of the Prohibition Act, the reasons have to be put down in writing and it will be open to the scrutiny of the officers higher up. If any additional safeguards are necessary, so far as this Bill is concerned, Government will take suitable action to safeguard the rights of citizens. As regards the present measure before the House, I wish to say it is a measure intended to carry out the policy of Prohibition in an ‘ effective manner.’ There is a widespread demand in the

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various districts which I have turned, both from the public and social workers, that there should be such a law and for want of it, we have witnessed large bodies of people going across the borders of dry districts and returning in a state of intoxication. Stories, I have also heard of people from a certain town in a certain dry area going in train-loads to wet areas and returning in all states of intoxication. Such trains are called 'Kallu Vandi.' Train journeys in such conditions cannot be tolerated by self-respecting people; much more so when women and children also have to make their journeys in such trains. Such state of affairs cannot be allowed to continue and this measure is intended to check and counteract that evil. I am sure that this measure will have a very whole effect upon the people and I beg the House to support the measure as it is a step in aid for the more effective implementing of the policy of Prohibition."

The motion that, that the Madras Prohibition (Amendment) Bill, 1947 (L.A. Bill No. 31 of 1947) as passed by the Assembly be taken into consideration at once, was put and declared carried but Sri Narayanaswami Nayudu challenged it for a division.

[The bells were rung and the doors were shut.]

The question was again put and declared carried *without a division*.

Clause 2 was put and carried.

Clause 1 was put and carried.

The Preamble was put and carried.

THE HON. MR. DANIEL THOMAS :—" I now move—
' that the Bill be passed into law.' "

The motion was put and carried and the Bill was passed into law.

The House rose for lunch.

(After lunch—2-30 p.m.)

(4) THE MADRAS SHOPS AND ESTABLISHMENTS BILL, 1947
(L.A. BILL NO. 15 OF 1947)

SRI B. NARAYANASWAMI NAYUDU :—" This Bill had been received only recently, and we had no time to go through this Bill. May I request the Hon. Minister whether consideration of this Bill cannot be adjourned to another day? "

MR. PRESIDENT :—" Why not the general discussion go on? Such of those members as would like to speak may speak. We shall not close it to-day."

SRI B. NARAYANASWAMI NAYUDU :—" General discussion will not be closed to-day, Sir? "

MR. PRESIDENT :—" May not be."

THE HON. SRI H. SITARAMA REDDI :—" Sir, this Bill has been discussed at great length in the Assembly . . . "